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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18.02.2026

\+ O.M.P. (COMM) 94/2017

AIRPORTS AUTHORITY OF INDIA .....Petitioner

Through: Mr. Digvijay Rai, Standing Counsel along with Mr. Archit Mishra, Advocate along with Mr. Gagan Kochar, Senior Manager (Law), Ms. Kashish Singhal, JE (Law) and Ms. Pragya Bansal, JE (Law).

versus

M/S K.B CONTRACTORS .....Respondent

Through: Mr. S.C. Singhal, Advocate through video-conferencing.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% JUDGEMENT (ORAL)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been filed under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], seeking to set aside the **Arbitral Award dated 15.08.2014**[2], insofar as it pertains to adjudication upon Claim No. 2, passed by the learned Sole Arbitrator in the matter titled *"M/s K.B. Contractors, New Delhi vs. Airports Authority of India"*

2. The relevant portion, insofar as it related to the decision on

[1] Act
[2] Award

Claim No. 2, of the said Award reads as follows:

> **"CLAIM 2** **COST ESCALATION** **Rs. 47,49,635/-**
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> Clause 53.1 of the General- Conditions of Contract states that 'Escalation in Prices' shall be applicable for work done during the stipulated period of contract, including such period for which the 'CONTRACT VALIDITY" is extended under the provisions of clause 13.4 of the Contract Agreement it also **clearly mentions that it is not applicable to works; were stipulation period is six months or less. As the stipulation period in this case is eight months, 'Escalation is applicable'.**
> The Claimants have not submitted details on how this amount was arrived at, in spite of the Respondents requesting for it in the Hearings.
> **It is seen that deletion of clause 53, and retention of clause 53.1, 'INITIALLY', was in order, and payment made towards Escalation (calculated as per sub clause 7), in the VIII RAR, is very much in accordance with the Contract Agreement.**
> **It is however not understood on what logic this decision was overturned and the payment made in the VIII RAR was recovered.** Further acceptance of the amount of Rs. 47,48,692/- paid in the VIII RAR by the Claimants also clearly proves that they agree with this amount worked out by the Respondents towards Escalation. As such the Claimants are entitled for the amount of Rs. 47,48,692/-.
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> **AWARD** **Rs.47,48,992/-**"

3. Mr. Digvijay Rai, learned Standing Counsel appearing on behalf of the Petitioner, submits that there is neither any evidence nor any basis for quantifying the said cost escalation at Rs. 47,49,635/-. He submits that, upon a bare perusal of the pleadings and, in particular, the tabulated claims in the **Statement of Claim**[3], it is evident that the amount is merely mentioned without any supporting calculations.

4. In furtherance thereof, he submits that there is absolutely no elaboration as to the manner in which the said amount has been quantified or arrived at, either in the particulars of the Statement of

[3] SOC

Claim or otherwise. He submits that there are no documents whatsoever substantiating the said claim. It is thus contended that the Award suffers from the vice of having been rendered in the absence of any evidence and, to that limited extent, would be liable to be set aside. He further submits that the same is not in consonance with the provisions of the Agreement.

5. ***Per contra***, Mr. Singhal, learned counsel appearing on behalf of the Respondent, candidly states that the only place where the said amount towards cost escalation finds mention is in the table set out in the Statement of Claim and nowhere else.

6. He, therefore, submits that the matter may be remanded for fresh adjudication limited to this claim alone.

7. This Court has heard the learned counsel appearing for the parties at length.

8. The submission of the Petitioner that the Arbitral Award, to the limited extent of adjudication upon Claim No. 2, is unreasoned, commends acceptance by this Court. A perusal of the findings returned on Claim No. 2 makes it evident that the learned Arbitrator has nowhere furnished any reasoning or disclosed the basis on which the amount towards "Cost Escalation" came to be quantified. There is no reference to any evidence or document relied upon for arriving at the said figure, nor is there any indication of the methodology adopted for its computation.

9. At this juncture, this Court finds it apposite to rely upon the judgment of the Hon'ble Supreme Court in ***PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees, V.O. Chidambranar Port Trust,***

Tuticorin[4], wherein the Apex Court held that an Arbitral Award not based on evidence would be patently illegal. The relevant portions of the said judgment are reproduced hereinbelow:

> **39.** In ***Ssangyong Engg. & Construction Co. Ltd.* [*Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213]** , this Court after considering various judgments including the judgment in ***Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]** observed thus : (*Ssangyong case* [*Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , SCC pp. 169-71, paras 34-42)
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> > *41*. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.
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> **40.** It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(*a*)(*iii*) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set

[4] (2023) 15 SCC 781

aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

41. A decision which is perverse, though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

42. To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of this Court in *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , which read thus : (SCC pp. 75-76)

> "*31*. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:
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> (*i*) a finding is based on no evidence, or
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> (*ii*) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
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> (*iii*) ignores vital evidence in arriving at its decision,
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> such decision would necessarily be perverse.
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> *32*. A good working test of perversity is contained in two judgments. In ***Excise and Taxation Officer-cum-Assessing Authority* v. *Gopi Nath & Sons* [*Excise and Taxation Officer-cum-Assessing Authority* v. *Gopi Nath & Sons*, 1992 Supp (2) SCC 312]** , it was held : (SCC p. 317, para 7)
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> > '*7*. … It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.'
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> In ***Kuldeep Singh* v. *Commr. of Police* [*Kuldeep Singh* v. *Commr. of Police*, (1999) 2 SCC 10 : 1999 SCC (L&S) 429]** , it was held : (SCC p. 14, para 10)
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> > '*10*. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision

> is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.'"
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> ***(Emphasis added)***

10. Further, as pointed out by learned counsel for the Petitioner, the said amount, i.e., Rs. 47,49,635/-, finds mention only in the Statement of Claim filed by the Respondent before the Arbitral Tribunal. Even therein, there is no disclosure of any ground, calculation, or basis upon which such quantification was arrived at by the Respondent, which was the claimant before the learned Arbitral Tribunal.

11. At this juncture, this Court deems it apposite to draw support from the decision of the Hon'ble Supreme Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[5], wherein, while affirming the principles enunciated in ***Dyna Technology Private Limited v. Crompton Greaves Limited***[6] and elaborating upon the requirement of a reasoned award, the Court categorised Arbitral Awards into three distinct classes based on the nature and adequacy of reasons furnished therein and the corresponding extent of their vulnerability to judicial interference. The relevant observations of the Court, which explicate this categorisation, are reproduced hereinbelow:

> "71.3. We find ourselves in agreement with the view taken in Dyna Technologies (supra), as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral

[5] (2025) 2 SCC 417
[6] (2019) 20 SCC 1

award on the ground of improper or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:
(1) where no reasons are recorded, or the reasons recorded are unintelligible;
(2) where reasons are improper, that is, they reveal a flaw in the decision- making process; and
(3) where reasons appear inadequate.

71.4. Awards falling in category (1) are vulnerable as they would be in conflict with the provisions of Section 31(3) of the 1996 Act. Therefore, such awards are liable to be set aside under Section 34, unless (a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award on agreed terms under Section 30.

71.5. Awards falling in category (2) are amenable to a challenge on ground of impropriety or perversity, strictly in accordance with the grounds set out in Section 34 of the 1996 Act.

71.6. Awards falling in category (3) require to be dealt with care. In a challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the parties in the arbitral proceedings and the degree of reasoning required to address them. The Court must thereafter carefully peruse the award, and the documents referred to therein. If reasons are intelligible and adequate on a fair-reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for inadequacy of reasons. However, if gaps are such that they render the reasoning in support of the award unintelligible, or lacking, the Court exercising power under Section 34 may set aside the award."

(Emphasis added)

12. In the considered view of this Court, the determination rendered in respect of Claim No. 2 squarely falls within Category 1, as delineated by the Hon'ble Supreme Court in ***OPG Power Generation (P) Ltd.*** (*supra*), namely, cases where either no reasons are recorded or the reasons furnished are so unintelligible as to be incapable of meaningful comprehension. As noticed hereinabove, the Hon'ble Supreme Court has categorically held that Arbitral Awards falling within Category 1 are in direct conflict with the mandate of Section

31(3) of the Act and, consequently, are vulnerable to interference and liable to be set aside under Section 34 of the Act.

13. Accordingly, in the present case, the Impugned Award, insofar as it relates to the determination of Claim No. 2, stands vitiated on account of the absence of intelligible reasoning. The said portion of the Award, therefore, cannot be sustained and is liable to be set aside to the extent it pertains to Claim No. 2.

14. Turning now to the question of severability of the arbitral award insofar as it pertains to Claim No. 2, it becomes necessary to advert to the necessary principles governing the same. In this regard, reliance is placed upon Paragraph nos. 33, 34, and 35 of the decision of the Hon'ble Supreme Court in ***Gayatri Balasamy v. M/s ISG Novasoft Technologies Limited***[7], which elucidate the doctrine of severability. The relevant extracts of the judgment are reproduced hereinbelow for ready reference:

> "**33**. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the court's jurisdiction when setting aside an award.
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> **34**. To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.
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> **35**. However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may

[7] 2025 SCC OnLine SC 986

> not be feasible when the "valid" and "invalid" portions are legally and practically inseparable. In simpler words, the "valid" and "invalid" portions must not be inter-dependent or intrinsically intertwined. If they are, the award cannot be set aside in part."

15. In the considered view of this Court, the impugned portion of the Arbitral Award pertains solely to the grant of cost escalation. The re-adjudication of this limited aspect is not so intrinsically interwoven with the determination of the remaining claims so as to necessitate a re-appreciation of the entire evidentiary record or to unsettle the findings returned in respect of the other claims. The grant of cost escalation under Claim No. 2 is clearly severable from the remainder of the Impugned Award and is capable of being dealt with independently, without in any manner impacting the findings relating to the other claims.

16. In view of the foregoing, the Arbitral Award dated 15.08.2014, insofar as it relates to the adjudication of Claim No. 2, is hereby set aside.

17. Accordingly, the present petition, along with all pending application(s), if any, stands allowed in the above terms.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 18, 2026/tk/kr/dj